ATTORNEYS FOR APPELLANT

Mark A. Psimos
Merrillville, Indiana

Nathan M. Psimos
Merrillville, Indiana

ATTORNEY FOR APPELLEE

Robert F. Ahlgrim Jr.
State Auto Field Legal Offices
Carmel, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Erin Harrell Stanley,
Appellant-Plaintiff,

v.

Andrea Burns and Renardell Burns,
Appellees-Defendants

January 13, 2023

Court of Appeals Case No. 22A-CT-721

Appeal from the Lake Superior Court 5

The Honorable Stephen E. Scheele, Judge

Trial Court Cause No. 45D05-2009-CT-921

May, Judge.

[1] Erin Harrell Stanley ("Plaintiff") appeals the trial court's grant of summary judgment to Andrea and Renardell Burns (collectively "Defendants"). Plaintiff

argues the grant of summary judgment was improper because Defendants owed her a duty. Because the facts most favorable to Plaintiff do not give rise to any duty owed to Plaintiff by Defendants, we affirm the trial court's grant of summary judgment for Defendants.

Facts and Procedural History

[2] In December 2019, Andrea Burns ("Andrea") was an Executive Director with Pure Romance, "a direct sales company that provides bath and beauty, sexual health education, [and] wellness products for ladies." (Appellant's App. at 39.) As an Executive Director, Andrea had a team of approximately 100 women who worked underneath her, and one of those women was Plaintiff. Pure Romance planned a YouTube live corporate broadcast for the evening of December 16, 2019, and Andrea invited her team to Defendants' home in St. John, Indiana, to watch the broadcast.

[3] The weather on December 16, 2019, had been "frosty" but it had not snowed. (*Id*. at 38.) Andrea admitted she had not checked the sidewalk or driveway that day to determine whether they were clear for her guests' arrival. Plaintiff arrived at Defendants' home at approximately 7:20 p.m., when it was already dark outside, and Plaintiff was wearing snow boots and a puffy winter coat. Because Defendants' driveway was filled with cars, Plaintiff parked on the street. As Plaintiff proceeded from her car toward Defendants' driveway, she took "three or four steps" on the road-side sidewalk, slipped on ice, fell, and

sustained injury to her left leg that required emergency medical attention. (*Id*. at 40.)

[4] On September 10, 2020, Plaintiff filed a personal injury complaint against Defendants that alleged negligence. On October 14, 2020, Defendants filed an answer that asserted numerous affirmative defenses. The trial court held attorney conferences and entered case management orders. Plaintiff and Andrea were deposed.

[5] Then, on October 7, 2021, Defendants filed a motion for summary judgment and memorandum of law. Defendants designated evidence from a deposition of Plaintiff to demonstrate where Plaintiff fell on the road-side sidewalk, and they designated a plat of survey of their property to demonstrate the location where Plaintiff fell was outside their property. In support of their motion, Defendants asserted they were entitled to summary judgment: (1) because they had no common law duty to clear the public sidewalk where Plaintiff fell, and (2) because the Town of St. John ordinance that required Defendants to clear the public sidewalk did not create a private right of action enforceable by Plaintiff against Defendants.

[6] Plaintiff filed a response in opposition to summary judgment that asserted a genuine issue of material fact existed about whether Defendants breached the heightened duty landowners owe to business invitees. The memorandum also asserted Defendants owed a duty to Plaintiff under the three-factor test announced in *Webb v. Jarvis*, 575 N.E.2d 992 (Ind. 1991) (duty depends on

relationship of parties, foreseeability of harm, and public policy concerns), *reh'g denied*, *disapproved of by Goodwin v. Yeakle's Sports Bar & Grill*, 62 N.E.3d 384, 391 (Ind. 2016), and under the standard announced for a "possessor of land" in Section 343 of the Second Restatement of Torts. (Appellant's App. at 94) (quoting Restatement (Second) of Torts § 343).

[7] After a reply from Defendants, the trial court held a hearing on the summary judgment motion. On March 10, 2022, the trial court entered summary judgment for Defendants in an order that contained no findings of fact but concluded "that when all designated evidence that is admissible is considered in a light most favorable to the non-movant/Plaintiff, the *Motion for Summary Judgment* as filed on 10/07/2021 should be GRANTED." (*Id*. at 11) (emphases in original).

Discussion and Decision

[8] Plaintiff asserts the trial court erred when it granted summary judgment to Defendants. "'When reviewing the grant or denial of a motion for summary judgment we stand in the shoes of the trial court.'" *Supervised Estate of Kent*, 99 N.E.3d 634, 637 (Ind. 2018) (quoting *City of Lawrence Utils. Serv. Bd. v. Curry*, 68 N.E.3d 581, 585 (Ind. 2017)). Summary judgment should be granted "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C).

> The party moving for summary judgment bears the burden of making a prima facie showing that there is no issue of material fact and that it is entitled to judgment as a matter of law. The burden then shifts to the non-moving party to show the existence of a genuine issue.

Burton v. Benner, 140 N.E.3d 848, 851 (Ind. 2020). Any doubts about the facts, or the inferences to be drawn from the facts, are resolved in favor of the non-moving party. *Id*. Where the challenge to summary judgment raises questions of law, we review them de novo. *Rogers v. Martin*, 63 N.E.3d 316, 320 (Ind. 2016). The party appealing the trial court's decision has the burden to convince us the trial court erred, but we scrutinize the trial court's decision carefully to make sure a party was not improperly denied its day in court. *Ryan v. TCI Architects*, 72 N.E.3d 908, 913 (Ind. 2017).

[9] Plaintiff's complaint alleged Defendants were liable for her injuries due to their negligence. To prevail on a claim of negligence, a plaintiff must demonstrate three elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) compensable injuries proximately caused by the breach. *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016). "Absent duty, there can be no negligence." *Ryan*, 72 N.E.3d at 913. Whether a duty exists is a question of law for the court to decide. *Rogers*, 63 N.E.3d at 321. However, "judicial determination of the existence of a duty is unnecessary where the element of duty has 'already been declared or otherwise articulated.'" *Id*. (quoting *N. Ind. Pub. Serv. Co. v. Sharp*, 790 N.E.2d 462, 465 (Ind. 2003)).

[10] Plaintiff argues Defendants had a duty to Plaintiff because they "controlled the premises." (Appellant's Br. at 9) (full capitalization removed). In support, Plaintiff cites Section 343 of the Second Restatement of Torts, which states:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he:
>
> > (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves a unreasonable risk of harm to such invitees, and
> >
> > (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
> >
> > (c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts § 343 (1965). While the Restatement provides guidance about when a possessor of land can be liable to an invitee for a condition on the land, it does not define the scope of "the land" or what it means to be a "possessor of land[.]"

[11] Here, there is no genuine issue of material fact about where Plaintiff fell. According to her own deposition testimony, she was on the road-side sidewalk in front of Defendants' house. Nor, in light of the uncontested plat of survey designated by Defendants, is there any genuine issue of material fact that the road-side sidewalk abutted, but was outside, the property owned by

Defendants. Thus, Plaintiff fell on a public sidewalk provided for the neighborhood.

[12] "It is well settled in Indiana that an owner or occupant of property abutting a public street or sidewalk has *no* duty to clear those streets or sidewalks of ice and snow." *Lawson v. Lafayette Home Hosp., Ind.*, 760 N.E.2d 1126, 1129 (Ind. Ct. App. 2002) (emphasis in original), *trans. denied*. Accordingly, Defendants had no duty under the common law to remove the snow from the public sidewalk where Plaintiff fell.[1] *See Denison Parking, Inc. v. Davis*, 861 N.E.2d 1276, 1280 (Ind. Ct. App. 2007) (Denison owed no common law duty of care to a pedestrian on a public sidewalk abutting Denison's property), *trans. denied*.

[13] Nor was a duty to Plaintiff created by the Town of St. John ordinance that requires removal of snow and ice from sidewalks. That ordinance provides:

> **Sec. 21-1.**
> **Removal of snow and ice from sidewalk.**
>
> (a) Every owner, lessee and/or occupant owning, leasing and/or occupying any premises abutting any concrete sidewalk in the Town shall, before 6:00 p.m. each day, remove from such sidewalk all snow and/or ice.

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[1] Plaintiff also cites *Pioneer Retail, LLC v. Jones*, in which this court affirmed a slip-and-fall plaintiff's judgment that made a grocery store liable for 25% of plaintiff's injuries – when the plaintiff fell on the sidewalk outside the grocery store and when the contract under which the grocery store leased space made the lessor responsible for the maintenance of the parking lot and sidewalks – because the grocery store "owed *some* duty of care to [plaintiff] as an invitee." 150 N.E.3d 662, 665 (Ind. Ct. App. 2020) (emphasis in original). Because *Pioneer* involved a sidewalk on private property, rather than a public sidewalk for which Indiana law assigns no duty to an abutting landowner, we decline to follow *Pioneer*.

> (b) The board of trustees shall cause to be removed all snow and ice remaining on any concrete sidewalks after 6:00 p.m. of any day and the cost thereof shall be assessed to the owner of the premises abutting the sidewalk.

(Appellant's App. at 30) (emphasis in original).

[14] Whether violation of a statute or ordinance gives rise to civil liability depends on whether the drafting body intended to create a "private right of action" – that is, a duty enforceable by tort law. *Stachowski v. Estate of Radman*, 95 N.E.3d 542, 545 (Ind. Ct. App. 2018). To determine the drafters' intent, we look first to whether the law contains "an express right of action," *id.*, which here is not the case. The Town of St. John ordinance does not provide express permission for pedestrians to sue those who possess land abutting an uncleared sidewalk. In the absence of an express right, we consider: "(1) whether the statute or ordinance was designed to protect particular individuals or the public in general and (2) whether it includes an independent enforcement mechanism." *Id.*

[15] Indiana courts have consistently held that ordinances such as the one at issue "are *not* enacted for the protection of individuals using the streets, but rather are for the benefit of the municipality." *See*, *e.g.*, *Denison*, 861 N.E.2d at 1281 (emphasis in original). Moreover, the ordinance itself contains an enforcement mechanism – the town may recoup the cost of snow and ice removal from the owner of the premises abutting the sidewalk – which precludes us grafting an additional enforcement mechanism into the ordinance. *See Doe #1 v. Ind. Dept. of Child Servs.*, 81 N.E.3d 199, 204 (Ind. 2017) (refusing to infer a private right of

action where legislature provided two alternative enforcement mechanisms). Accordingly, the ordinance does not confer a private right of action that Plaintiff could enforce against Defendants under tort law. *See id*. (holding legislature did not intend a statute to create civil liability).

Conclusion

[16] Because Defendants had no common law or statutory duty to clear the public sidewalk, the trial court properly granted summary judgment to Defendants. Accordingly, we affirm.

[17] Affirmed.

Riley, J., and Tavitas, J., concur.